

TITLE 8
PROVISIONAL REMEDIES IN CIVIL ACTIONS

CHAPTER 2
DISCHARGE OF PERSONS IMPRISONED ON CIVIL PROCESS

8-201. RIGHT TO DISCHARGE. Any person confined in jail on an execution issued on a judgment rendered in a civil action must be discharged therefrom upon the conditions in this chapter specified.

[(8-201) C.C.P. 1881, sec. 783; R.S., R.C., & C.L., sec. 5075; C.S., sec. 7308; I.C.A., sec. 6-201.]

8-202. NOTICE OF APPLICATION. Such person must cause a notice in writing to be given to the plaintiff, his agent or attorney, that at a certain time and place he will apply to the judge of the district court of the county in which such person may be confined, or, in case of his absence or inability to act, to a magistrate of the county in which such person may be imprisoned, for the purpose of obtaining a discharge from his imprisonment.

[(8-202) C.C.P. 1881, sec. 784; R.S., R.C., & C.L., sec. 5076; C.S., sec. 7309; I.C.A., sec. 6-602; am. 1969, ch. 125, sec. 3, p. 386.]

8-203. SERVICE OF NOTICE. Such notice must be served upon the plaintiff, his agent or attorney, one (1) day at least before the hearing of the application.

[(8-203) C.C.P. 1881, sec. 785; R.S., R.C., & C.L., sec. 5077; C.S., sec. 7310; I.C.A., sec. 6-203.]

8-204. EXAMINATION OF DEBTOR. At the time and place specified in the notice, such person must be taken before such judge, who must examine him under oath concerning his estate, and property, and effects, and the disposal thereof, and his ability to pay the judgment for which he is committed, or any part thereof, and such judge may also hear any other legal and pertinent evidence that may be produced by the debtor or the creditor.

[(8-204) C.C.P. 1881, sec. 786; R.S., R.C., & C.L., sec. 5078; C.S., sec. 7311; I.C.A., sec. 6-204.]

8-205. INTERROGATORIES MAY BE PROPOUNDED. The plaintiff in the action may, upon such examination, propose to the prisoner any interrogatories pertinent to the inquiry, and they must, if required by him, be proposed and answered in writing, and the answer must be signed and sworn to by the prisoner.

[(8-205) C.C.P. 1881, sec. 787; R.S., R.C., & C.L., sec. 5079; C.S., sec. 7312; I.C.A., sec. 6-205.]

8-206. OATH PRIOR TO DISCHARGE. If, upon the examination, the judge is satisfied that the prisoner is entitled to his discharge, he must administer to him the following oath, to wit: "I, . . . , do solemnly swear that I have not any estate, real or personal, to the amount of fifty dollars (\$50.00), except such as is by law exempted from being taken in execution; and that I have not any other estate now conveyed or concealed, or in any way disposed

of, with design to secure the same to my use, or to hinder, delay or defraud my creditors, so help me God."

[(8-206) C.C.P. 1881, sec. 788; R.S., R.C., & C.L., sec. 5080; C.S., sec. 7313; I.C.A., sec. 6-206.]

8-207. ORDER OF DISCHARGE. After administering the oath the judge must issue an order that the prisoner be discharged from custody, and the officer, upon the service of such order, must discharge the prisoner forthwith, if he be imprisoned for no other cause.

[(8-207) C.C.P. 1881, sec. 789; R.S., R.C., & C.L., sec. 5081; C.S., sec. 7314; I.C.A., sec. 6-207.]

8-208. REAPPLICATION FOR DISCHARGE. If such judge does not discharge the prisoner, he may apply for his discharge at the end of every succeeding thirty (30) days, in the same manner as above provided, and the same proceedings must thereupon be had.

[(8-208) C.C.P. 1881, sec. 790; R.S., R.C., & C.L., sec. 5082; C.S., sec. 7315; I.C.A., sec. 6-208.]

8-209. DISCHARGE IS FINAL. The prisoner after being so discharged is forever exempted from arrest or imprisonment for the same debt, unless he be convicted of having wilfully sworn falsely upon his examination before the judge, or in taking the oath before prescribed.

[(8-209) C.C.P. 1881, sec. 791; R.S., R.C., & C.L., sec. 5083; C.S., sec. 7316; I.C.A., sec. 6-209.]

8-210. JUDGMENT REMAINS IN FORCE. The judgment against any prisoner who is discharged remains in full force against any estate which may then, or at any time afterward during the life of the judgment, belong to him, and the plaintiff may take out a new execution against the goods and estate of the prisoner in like manner as if he had never been committed.

[(8-210) C.C.P. 1881, sec. 792; R.S., R.C., & C.L., sec. 5084; C.S., sec. 7317; I.C.A., sec. 6-210.]

8-211. DISCHARGE BY ORDER OF PLAINTIFF. The plaintiff in the action may at any time order the prisoner to be discharged, and he is not thereafter liable to imprisonment for the same cause of action.

[(8-211) C.C.P. 1881, sec. 793; R.S., R.C., & C.L., sec. 5085; C.S., sec. 7318; I.C.A., sec. 6-211.]

8-212. ADVANCE OF BOARD MONEY. Whenever a person is committed to jail on an execution issued on a judgment recovered in a civil action, the creditor, his agent or attorney, must advance to the jailer on such commitment, sufficient money for the board of the prisoner, at the rate provided by law, for one (1) week, and must make the like advance for every successive week of his imprisonment; and in case of failure to do so, the jailer must forthwith discharge such prisoner from custody, and such discharge has the same effect as if made by order of the creditor.

[(8-212) C.C.P. 1881, sec. 794; R.S., R.C., & C.L., sec. 5086; C.S.,
sec. 7319; I.C.A., sec. 6-212.]